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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996	)	CC Docket No. 96-187

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation (Sprint), on behalf of the Sprint Local Telephone companies and Sprint Communications Company L.P., hereby submits its reply to the Commission's September 6, 1996 Notice of Proposed Rulemaking (NPRM) in the above-captioned docket.

I. "DEEMED LAWFUL" SHOULD BE INTERPRETED TO MEAN PRESUMED LAWFUL.

The most critical issue to be resolved in this docket is the meaning of the term "deemed lawful" in Section 204(a)(3) because such definition will establish whether or not the legal framework currently governing tariff filings is overturned and whether or not the Commission may award damages retroactive to the effective date of the filing if the tariff is found unlawful as a result of a complaint proceeding under Section 208 or a rate prescription made under Section 205. Sprint, which has both local exchange

and interexchange operations, supports the view that "deemed lawful" is best interpreted to mean a presumption of lawfulness.[1]

Contrary to the arguments of those who believe the term "deemed lawful" means a determination of lawfulness,[2] the definitions of "deemed" in Black's Law Dictionary cited by the Commission are not dispositive.[3] Some of the definitions convey a determination, such as "to hold;... adjudge;. ..[and] determine." Others, however, express presumption, such as to "consider;...believe;... treat as if; [and] construe." Because of the difference in the meanings and the lack of legislative history on this provision, the Commission must adopt a definition that balances protection of ratepayers against unlawful rates, terms and conditions with the furtherance of the tariff streamlining process and the development of competitive markets.

Sprint and others[4] believe that it would be unreasonable to assume that the Congress intended to completely overturn the regulatory treatment of LEC tariff filings without explanation. The LECs' interpretation would afford them a determination of lawfulness which is beyond that currently afforded nondominant interexchange carriers. Yet, unlike nondominant carriers, the LECs retain significant market power, and they will continue to be the monopoly providers of access services until competition develops in

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[1] *See, also,* Ameritech at 6-9, ACTA at 4-7, ALTS at 3-4, AT&T at 4- CompTel at 2-3, Frontier at 2-3, KMG at 7, McLeod at 2-4, MCI at 3-6, MFS at 7-8, the Networks at 3-8, Time Warner Communications at 4-6 and TRA at 3-5.
[2] BellSouth at 4-5, CBT at 3-4, NYNEX at 9-11, Pacific at 4, USTA at 3-4, and US West at 4-5.
[3] NPRM at ¶11.
[4] AT&T at 3, and GSA at 4.

their areas. Until such competition develops, the marketplace cannot be relied upon to ensure the reasonableness of rates.

As long as the LECs retain market power, they have the ability to collect rates that exceed costs. It would not be sound policy to allow the LECs to keep all above-cost revenues charged to customers prior to a determination of lawfulness by the Commission. Such policy would incent the LECs to overcharge their competitors who have limited or no alternatives. Therefore, the proper interpretation of the term "deemed lawful" is one that presumes lawfulness and thereby establishes higher burdens of proof for those who oppose tariff filings. Higher hurdles, which reduce the number of tariff filings that are suspended and investigated, in combination with shorter notice periods established in Section 203(a)(3), will streamline the tariff filing process without precluding relief for those oppose the tariff filings.

Some incumbent LECs argue that their customers will not be disadvantaged by their interpretation of "deemed lawful" because competitive offerings will ensure that their rates are not too high.[5] However, presently such competition does not exist. Indeed, unreasonably high rates will deter the development of competition, particularly if the Commission does not suspend and investigate the tariff offerings and the customer cannot recover damages for rates later found to be unreasonable. For example, under the LECs' interpretation, if the price for establishing physical

[5] *See, e.g.*, NYNEX at 11-12.

collocation is unreasonably high and a competitive carrier purchases such service, the competitor will not be able to recover the overcharges if subsequently the rates are found unlawful. Clearly, the competitor, and, even more important, competition itself, is harmed by this result.

Some local exchange companies further argue that the Act deems the tariffs to be lawful upon the filing of the tariff, not on its effectiveness.[6] Pacific, for example, argues that this is true because the phrase "shall be deemed lawful" precedes the phrase "and shall be effective 7 days ... or 15 days after the date on which it is filed with the Commission." Pacific concludes that the tariff is lawful when filed and "if not superseded or investigated by the Commission in the 7-day or 15-day period, become both lawful and effective."[7]

A tariff filing cannot be lawful upon filing because it would render the effective rate unlawful, and the carrier cannot charge an unlawful rate. In order for the rate to be considered lawful immediately and the carrier to charge only lawful rates, the tariff would have to be effective immediately upon filing. But this cannot be. Congress clearly did not intend for the tariff to be lawful upon filing because it adopted 7/15 day notice periods.

Thus, the term "deemed lawful" must be interpreted to mean presumed lawful. A presumption of lawfulness, in combination with shorter notice periods, will meet Congress's mandate to streamline tariffs. To

[6] GTE at 10, Pacific Bell at 2, and US West at 7.
[7] Pacific at 3.

interpret the term otherwise would overturn the current regulatory regime without explanation, would create a dichotomy in the assumptions of lawfulness between dominant and nondominant carriers, and would fail to protect the ratepayer.

II. NEW SERVICES ARE NOT COVERED BY THE STREAMLINING PROVISIONS.

The commenting parties had opposing views as to whether Congress intended to streamline the tariff process for new services. The LECs generally support the inclusion of new services;[8] others oppose it.[9] In its Comments (at 4-5) Sprint quoted the legislative history of Section 402 which makes clear that Congress did not contemplate the extension of Section 204(a)(3) to new services: "New subsection (b) of section 402 of the conference agreement addresses regulatory relief that streamlines the procedures for revision by local exchange carriers of charges, classification and practices under section 204 of the Communication's Act."[10] Given this interpretation by Congress, any attempts to interpret this provision otherwise based on the language of this section, on other parts of Section 203 or in conjunction with the Price Cap rules and the Commission's streamlining proposal must be dismissed.

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[8] Alltel at 3-4, Bell Atlantic at 2-4, NYNEX at 12, SWB at 5.
[9] *See, e.g.*, GSA at 7.
[10] Conference Report on S. 652, H.R. Report No. 104-458, 104th Congress, 2nd Session 186 (1996) (emphasis added).

III. STREAMLINED FILING ON 7/15 DAY NOTICES MUST APPLY TO ALL TARIFF CHANGES TO EXISTING SERVICES.

For the most part, the LEC customers argued that the 7/15 day notice requirements should only apply to rate changes for existing services.[11] The LECs, on the other hand, argue that the streamlined notice requirements apply to all tariff changes to existing services.[12] Sprint, with both LEC and LEC customer interests, agreed with the Commission's tentative conclusion[13] and the position of the LECs that the 7/15 day notice provisions must apply to all tariff filings that impact existing services.[14] To hold otherwise would ignore and render meaningless the first sentence of Section 204(a)(3) that states a LEC may file "a new or revised charge, classification, regulation, or practice on a streamlined basis.

Further Sprint, agrees with Pacific that:

> The Commission should apply the 7 day effective date of Section 204(a)(3) to revisions in classifications, regulations or practices. Only rate increased are designated for 15 day treatment. ... Price cap LECs currently operate under a 14 day effective date for any revisions that do not take rates above the cap or outside the bands. Thus, tariff revisions that do not affect charges currently have a 14 day effective date. Applying a 15 day effective date under Section 204(a)(3) for these tariff revisions would be a step backward, away from streamlining, contrary to Congress's intent.[15]

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[11] See, e.g., ALTS at 4-6 and Time Warner Communications at 6-7.
[12] See, e.g., Pacific at 8-9 and SWB at 5-8.
[13] NPRM at ¶17.
[14] Sprint at 5.
[15] Pacific at 9. See also, Sprint at p.9 citing Commission Rule 61.58(c)(2) (allows for 14 days notice for price cap LEC tariffs that do not cause any API to exceed applicable PCI).

IV. THE ADVANCE NOTICE OF STREAMLINED TARIFF FILINGS REQUESTED BY MFS MUST BE REJECTED.

MFS urges the Commission to adopt a requirement that "ILECs make publicly available a schedule of planned Section 204(a)(3) 7/15 day filings at least thirty days prior to the date of filing."[16] Nothing in Section 204(a)(3) even remotely supports such a requirement. Any such advance notice burden would clearly be a step away from a streamlined tariff process and would add to the regulatory burdens of LECs. Such increased burden is contrary to the express intent of Congress to streamline the tariff filing process.

V. ADDITIONAL COMMENTS SHOULD BE REQUESTED ON THE ELECTRONIC FILING PROPOSALS MADE IN THE COMMENTS.

Most of the commenting parties support electronic filing of tariffs, and many propose alternative methods to accomplish it. Sprint strongly agrees with those who argue that multiple platforms and software packages must be accommodated because of the wide diversity in the platforms and software packages currently used by those filing tariffs. Sprint also believes that the Commission should not adopt a single standard and require all carriers to conform. In addition, Sprint agrees with those who point out that there are issues of security and accuracy of the electronic filings which must be addressed.

Sprint therefore reiterates its recommendation that this issue should be addressed by the appropriate industry fora which could make

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[16] MFS at 10.

recommendations based on industry consensus to the Commission. Such recommendations should identify a structure for filing tariffs with alternative means of compliance and a reasonable time frame for achieving such compliance.

Respectfully submitted,

SPRINT CORPORATION

By: 

Jay C. Keithley
Leon M. Kestenbaum
Marybeth M. Banks
1850 M Street, NW
Suite 1100
Washington, DC 20036
(202) 828-7400

Craig T. Smith
P.O. Box 11315
Kansas City, MO 64112
(913) 624-3065

October 24, 1996

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 24th day of October, 1996, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Reply Comments of Sprint Corporation" in the Matter of Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187, filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.

Melinda L. Mills

Regina Keeney*
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, DC 20554

Jim Schlichting*
Chief, Tariff Division
Federal Communications Commission
1919 M Street, NW, Room 518
Washington, DC 20554

Wilbur Thomas*
ITS
1919 M Street, NW, Room 246
Washington, DC 20554

Joel Ader*
Bellcore
2101 L Street, NW, 6th Floor
Washington, DC 20037

Dorothy Conway*
Federal Communications Commission
1919 M Street, NW -- Room 234
Washington, DC 20554

Timothy Fain
OMB Desk Officer
10236 NEOB
725 17th Street, NW
Washington, DC 20503

Catherine Wang
Tamar Haverty
Swidler & Berlin
3000 K Street, NW, Suite 300
Washington, DC 20007
Counsel for KMC Telecom; MFS Communications

Gary L. Phillips
Ameritech
1401 H Street, NW
Suite 1020
Washington, DC 20005

Alan Buzacott
MCI Telecommunication Corp.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Gail Polivy
GTE Service Corp.
1850 M Street, NW
Suite 1200
Washington, DC 20036

Charlene Vanlier
Capital Cities/ABC, Inc.
21 Dupont Circle
6th Floor
Washington, DC 20036

Diane Zipursky
National Broadcasting Company, Inc.
1299 Pennsylvania Avenue
11th Floor
Washington, DC 20004

Randolph J. May
Timothy J. Cooney
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, NW
Washington, DC 20004

Mark W. Johnson
CBS, Inc.
One Farragut Square South
Suite 1000
Washington, DC 20006

Bertram W. Carp
Turner Broadcasting System, Inc.
820 First Street, NE
Suite 956
Washington, DC 20002

Andrew D. Lipman
Russell M. Blau
Swidler & Berlin
3000 K Street, NW, Suite 300
Washington, DC 20007
Counsel for McLeod TeleManagement

Joanne Salvatore Bochis
NECA
100 South Jefferson Road
Whippany, NJ 07981

Christopher J. Wilson
Frost & Jacobs
2500 PNC Center
201 East Fifth Stret
Cincinnati, OH 45202

Thomas E. Taylor
Cincinnati Bell Telephone Company
201 East Fourth Street
6th Floor
Cincinnati, OH 45202

Carolyn C. Hill
AllTel Telephone Services Corporation
655 15th Street, NW
Suite 220
Washington, DC 20005

M. Robert Sutherland
Richard M. Sbaratta
BellSouth Corporation
1155 Peachtree Street, NE
Suite 1700
Atlanta, GA 30309-3610

Joseph DiBella
NYNEX Telephone Companies
1300 I Street, NW, Suite 400 West
Washington, DC 20005

Marlin D. Ard
Lucille M. Mates
Jeffrey B. Thomas
Pacific Telesis Group
140 New Montgomery Street
Room 1529
San Francisco, CA 94105

Michael Yourshaw
Wiley Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Robert M. Lynch
Durward D. Dupre
Thomas A. Pajda
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, MO 63101

Robert B. McKenna
Coleen M. Egan Helmreich
US West, Inc.
1020 19th Street, NW
Suite 700
Washington, DC 20036

Michael J. Shortly, III
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646

James S. Blaszak
Alexandra M. Field
Levine Blaszak, Block & Boothby
1300 Connecticut Avenue< NW
Suite 500
Washinton, DC 20036-1703
Counsel for Ad Hoc Telecom Users Com.

Andrew D. Lipman
C. Joel Van Over
Swidler & Berlin
3000 K Street, NW
Suite 300
Washington, DC 20007
Counsel for CITI

Charles H. Helein
Helein and Associates, P.C.
8180 Greensboro Drive
Suite 700
McLean, VA 22012

Charles C. Hunter
Catherine M. Hannah
Hunter & Mow, P.C.
1620 I Street, NW
Suite 701
Washington, DC 20006
Counsel for Telecommunications Resellers Assoc

Danny E. Adams
Kelley Drye & Warren LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036
Counsel for CompTel

Genevieve Morelli
CompTel
1440 Connecticut Avenue, NW
Suite 220
Washington, DC 20036

Mitchell F. Brecher
Fleischman & Walsh, LLP
1400 Sixteenth Street, NW
Washington, DC 20036
Counsel for Time Warner

Emily M. Williams
ALTS
1200 19th Street, NW
Washington, DC 20036

Mark C. Rosenblum
Peter H. Jacoby
James H. Bolin
AT&T
295 North Maple Avenue
Room 3245H1
Basking Ridge, NJ 07920

Edward Shakin
Bell Atlantic
1320 North Court House Road
8th Floor
Arlington, VA 22201

David N. Porter
MFS Communications Company, Inc.
3000 K Street, NW, Suite 300
Washington, DC 20007

Mary McKermot
Lina Kent
Charles D. Cosson
USTA
1401 H Street, NW
Suite 600
Washington, DC 20005

Jody Burton
General Services Administration
18th & F Streets, NW, Room 4002
Washington, DC 20405

* Indicates Hand Delivery